

AMENDED IN ASSEMBLY APRIL 17, 2007

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 941**

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**Introduced by Assembly Member Torrico**

February 22, 2007

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An act to amend Section 10240 of the Business and Professions Code, *and to add Section 1922 to the Civil Code*, relating to lending.

### LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, Torrico. Real property loans: ~~written statement to borrower.~~ *documents.*

Existing law, the Real Estate Law, requires a real estate broker, who negotiates a loan to be secured by a lien on real property, to deliver to the borrower a statement in writing containing specified information relating to the loan transaction. A willful violation of the Real Estate Law is a crime. *Existing law requires a lender to provide a borrower with specified information prior to execution by the borrower of a mortgage payment instrument.*

This bill would require a real estate broker to provide a borrower the option to receive a copy of this statement, *and any other document connected with the loan*, in an electronic format *instead of in paper format, as specified.* The bill would also require a lender, as defined, that negotiates or services a loan secured by a lien on real property to provide a borrower with the option to receive a copy of any document connected with the loan in an electronic format.

Because a willful violation of the bill's requirements *by a real estate broker* would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 10240 of the Business and Professions  
2 Code is amended to read:

3 10240. (a) Every real estate broker, upon acting within the  
4 meaning of subdivision (d) of Section 10131, who negotiates a  
5 loan to be secured directly or collaterally by a lien on real property  
6 shall, within three business days after receipt of a completed written  
7 loan application or before the borrower becomes obligated on the  
8 note, whichever is earlier, cause to be delivered to the borrower a  
9 statement in writing, containing all the information required by  
10 Section 10241. It shall be personally signed by the borrower and  
11 by the real estate broker negotiating the loan or by a real estate  
12 licensee acting for the broker in negotiating the loan. When so  
13 executed, an exact copy thereof shall be delivered to the borrower  
14 at the time of its execution. The real estate broker negotiating the  
15 loan shall retain on file for a period of three years a true and correct  
16 copy of the statement as signed by the borrower.

17 No real estate licensee shall permit the statement to be signed  
18 by a borrower if any information required by Section 10241 is  
19 omitted.

20 (b) For the purposes of applying the provisions of this article,  
21 a real estate broker is acting within the meaning of subdivision (d)  
22 of Section 10131 if he or she solicits borrowers, or causes  
23 borrowers to be solicited, through express or implied  
24 representations that the broker will act as an agent in arranging a  
25 loan, but in fact makes the loan to the borrower from funds  
26 belonging to the broker.

(c) In a federally regulated residential mortgage loan transaction in which the principal loan amount exceeds the principal loan levels set forth in Section 10245, a real estate broker satisfies the requirements of this section if the borrower receives (1) a “good faith estimate” that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.), and that sets forth the broker’s real estate license number and a clear and conspicuous statement on the face of the document stating that the “good faith estimate” does not constitute a loan commitment, (2) all applicable disclosures required by the Truth in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan contains a balloon payment provision, the disclosure described in subdivision (h) of Section 10241, the balloon disclosure required for that loan by Fannie Mae or Freddie Mac, or an alternative disclosure determined by the commissioner to satisfy the requirements of the Truth in Lending Act.

Prior to becoming obligated on the loan the borrower shall acknowledge, in writing, receipt of the “good faith estimate” and all applicable disclosures required by the Truth in Lending Act. The real estate broker shall retain on file for a period of three years a true and correct copy of the signed acknowledgment and a true and correct copy of the “good faith estimate” and all applicable disclosures required by the Truth in Lending Act as acknowledged by the borrower.

(d) A real estate broker shall give a borrower the option to receive a copy of the statement required by this section *and any other document connected with the loan* in electronic format instead of in paper format. For purposes of this subdivision, “electronic format” means a format in which the information is held in a record created, generated, sent, communicated, received, or stored by electronic means. The electronic format shall be a format that does not jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

SEC. 2 Section 1922 is added to the Civil Code, to read:

1922. A lender, as defined in paragraph (2) of subdivision (a) of Section 1921, that negotiates or services a loan for a borrower secured directly or collaterally by a lien on real property shall give the borrower the option to receive a copy of any document connected with the loan in electronic format instead of in paper

1 *format. For purposes of this section, “electronic format” means*  
2 *a format in which the information is held in a record created,*  
3 *generated, sent, communicated, received, or stored by electronic*  
4 *means. The electronic format shall be a format that does not*  
5 *jeopardize or compromise the security or integrity of the original*  
6 *record or of any proprietary software in which it is maintained.*

7 ~~SEC. 2.~~

8 *SEC. 3.* No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.